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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,872	02/22/2002	Loren J. Veltrop	00-176-D	2509

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,872

Applicant(s)

VELTROP, LOREN J.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 70-79 is/are rejected.
- 7) ☒ Claim(s) 80-84 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. Applicant refers to an IDS filed in May 2002. However, there is no record in the application of an IDS. Applicant is requested to submit a copy of the IDS along with a receipt verification.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 70-78 are rejected under 35 U.S.C. 102(e) as being anticipated by Shei et al [Pat. No. 6,262,394].

Shei et al teach a method of warming cooked food (abstract) by placing it in a tray with a lip (Figure 1, B), inserting the tray into a receiving space of a freestanding cover with a flat flange section and a lower support section (Figure 1, #80), a warming apparatus with heated compartments (Figure 1, #4 & 48), the flange blocking the tray opening by being flush with the lip (Figure 3, left side), front and rear openings for inserting and

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removing the trays and covers (Figure 1-2, #36; column 6, line 42 to column 7, line 41), and a shelf which supports the cover (Figure 3, #70).

4. Claims 70-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Oda et al [Pat. No. 5,028,761].

Oda et al teach a method of warming cooked food (abstract) by placing it in a tray with a lip (Figure 5, #12), inserting the tray into a receiving space of a freestanding cover with a flat flange section and a lower support section (Figure 5, #13-15), a warming apparatus with heated compartments (Figure 1, #1), the flange blocking the tray opening by being flush with the lip (Figure 5, #14), front and rear openings for inserting and removing the trays and covers (Figure 1, #2), and a shelf which supports the cover (Figure 6, #91-92).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oda et al in view of Robards et al [pat. No. 5,900,173]

Oda et al teach the above mentioned concepts. Oda et al do not teach the cover contacting the compartment upper surface. Robards et al teach a method of warming cooked foods by use of tray which is pressed against the upper surface of the

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compartment (Figure 3, #48). It would have been obvious to one of ordinary skill in the art to incorporate the upper surface contact of Robards et al into the invention of Oda et al since both are directed to methods of warming cooked foods, since Oda et al already included a cover which sealed off tray opening (Figure 5, #12-13), and since the upper surface contact of Robards et al would have prevented the cover of Oda et al from lifting up due to pressure and thus releasing moisture from the tray.

Allowable Subject Matter

7. Claims 80-84 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: dependent claim 80 defines over the prior art of record since the prior art does not teach, suggest, nor render obvious the cover having a front retainer which engages the shelf.

Response to Arguments

9. Applicant's arguments filed January 30, 2004 have been fully considered but they are not persuasive.

Applicant argues that Shei et al do not teach a "support section substantially defining said receiving space". However, Shei et al clearly disclose a cover including a lower support section defining said receiving space (Figure 1, #82).

Applicant appears to argue that the support section should rest upon the same surface as the tray, and that the cover should receive and contain all of the tray. However, these concepts are not present in the claims.

Applicant argues that Oda et al do not teach the cover "being disposed in said heated compartment". However, Oda et al clearly disclose a cover disposed in a heated compartment (Figure 1, #1 & 13).

Applicant appears to argue that the cover should be placed in the compartment, and next the tray should be inserted into the cover which was already within the compartment. However, this concept is not present in the claims. Claim 70 merely required that the tray be placed under the cover, and that at some point in time, the cover should be in the compartment.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
